

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Date:

MAY 20 1986

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1954 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not. However, we have determined that you may be eligible to elect to be treated as a homeowners association exempt under section 528 of the Code.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120-H as a homeowners association, or Form 1120 as a regular corporation if you do not meet the criteria of section 528.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892 (Rev. 7-80), "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is

5/12/86

5-2086-

[REDACTED]

requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[REDACTED]
[REDACTED]
District Director

Encures: 3

Enclosure I

[REDACTED]

Information submitted with your application indicates that you were formed in [REDACTED] under Articles of Incorporation. Your Articles of Incorporation state that your purposes are:

To provide an entity pursuant to Act No. [REDACTED], as amended, hereinafter called the "[REDACTED]" for the operation of condominium properties in the City of [REDACTED] County, [REDACTED], and, in furtherance thereof:

- (a) To maintain, operate and manage the condominium buildings and improvements;
- (b) To levy and collect assessments from members to defray the costs, expenses and losses of the condominium;
- (c) To employ personnel and to contract for the maintenance, administration and management of the condominium, and to delegate to said persons such power and duties as are necessary therefor;
- (d) To purchase insurance upon the condominium property and to collect and allocate the proceeds thereof;
- (e) to make and enforce reasonable regulations concerning the use of the condominium property in furtherance of the master deed and by-laws;
- (f) To approve or disapprove the conveyance, mortgage and/or lease of apartments; and
- (g) In general, to carry on any other business in connection with and incident to the foregoing purposes not forbidden, and with all the powers conferred upon non-profit corporations by the laws of the State of [REDACTED].

Your Articles of Incorporation state that membership in your organization is as follows:

Each co-owner of record of a Unit in the condominium, including the Developer thereof until all such units have been sold, shall be a member of the corporation and such membership shall not be assigned, pledged, encumbered or transferred in any manner except as an appurtenance to such Unit. The subscribers hereto shall also be members of the corporation until such time as their membership shall

████████████████████

terminate as hereinafter provided.

Each member of the corporation shall be entitled to one vote, the value of which and the manner of exercise of which are to be determined in accordance with the By-laws of this corporation.

You state in your application that your sole source of support is a monthly fee charged to members to be used for an escrow or reserve account to cover major repairs and the remainder of the fee is to be used for routine upkeep and maintenance such as lawn care and snow plowing.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements.

In Rev. Rul. 72-102, 1972-1 C.B. 149, a membership organization was formed by a developer and operated to administer and enforce covenants for preserving the architecture and appearance of a housing development, and to own and maintain common green areas, streets and sidewalks for the use of all development residents. Its activities were for the common benefit of the whole development rather than for individual residents or the developer. In this revenue ruling, it was held, "A neighborhood, precinct, subdivision, or housing development may constitute a community. For example, exempt civic leagues in urban areas have traditionally represented neighborhoods or other subparts of much larger political units. By administering and enforcing covenants, and owning and maintaining certain non-residential, non-commercial properties of the type normally owned and maintained by municipal governments, this organization is serving the common good and the general welfare of the people of the entire development." The organization was held to be exempt under section 501(c)(4) of the Code.

Rev. Rul. 74-99, 1974-1 C.B. 131 modified Rev. Rul. 72-102. This revenue ruling clarified the definition of community and gives an interpretation

[REDACTED]

of the phrase "non-residential, non-commercial properties of the type normally owned and maintained by municipal governments." Rev. Rul. 74-99 provides, in part, that in order for a homeowners association to qualify for exemption under section 501(c)(4) of the Code, (1) it must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public. The revenue ruling, in reciting the areas and facilities owned and maintained by the organization, speaks only of "common green areas, streets, and sidewalks." The revenue ruling was, by the quoted phrases, designed to indicate that the only area and facilities encompassed were those traditionally recognized and accepted as being of direct governmental concern in the exercise of the powers and duties entrusted to governments to regulate community, health, safety and welfare. Thus, the revenue ruling was intended only to approve ownership, and maintenance by a homeowners association of such areas as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners association, as appropriate and consistent with exemption under section 501(c)(4).

Rev. Rul. 80-63, 1980-1 C.B. 116 clarified Rev. Rul. 74-99. This revenue ruling provides that an organization of the type described in Rev. Rul. 72-102 must also satisfy the requirements of Rev. Rul. 74-99. The common areas or facilities owned and maintained such as roadways and parklands, sidewalks and street lights must be for the use and enjoyment of the general public and not restricted to members of the homeowners' association. For purposes of Rev. Rul. 74-99 recreational facilities are included in the definition of "common areas".

The facilities that your association will maintain are owned by and used exclusively by members of your association and not the general public. Therefore, your organization is not the described in section 501(c)(4) of the Code because you are performing services for the private benefit of your members. We are also of the opinion that you do not qualify under any other section of the Code.